

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3660

Report Summary

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Ronald M. Sabraw, Chair
Hon. Elaine Watters, Chair, Uniform Rules Subcommittee
Patrick O'Donnell, Committee Counsel, 415-865-7665

DATE: April 17, 2000

SUBJECT: Motion to Be Relieved as Counsel (adopt Forms MC-051, MC-052
and MC-053) (Action Required) _____

Issue Statement

There are presently no Judicial Council forms for attorneys to use in motions to be relieved as counsel of record. Attorneys are supposed to prepare, file, and serve their own motion papers in accordance with rule 376 of the California Rules of Court. However, motions to be relieved as counsel sometimes must be heard several times before the requisite notice is given to the client and sufficient other information is provided to the courts. To deal with this problem, the Civil and Small Claims Advisory Committee proposes that a mandatory set of Judicial Council forms be adopted for use in all motions to be relieved as counsel in civil cases.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2000, adopt:

1. *Notice of Motion and Motion to Be Relieved as Counsel—Civil* (Form MC-051);
2. *Declaration in Support of Attorney's Motion to Be Relieved as Counsel—Civil* (Form MC-052); and
3. *Order Granting Attorney's Motion to Be Relieved as Counsel—Civil* (Form MC-053).

Rationale For Recommendation

The Civil and Small Claims Advisory Committee has concluded that providing mandatory Judicial Council forms for motions to be relieved as counsel will make it more likely that, in most instances, proper notice would be given to the client and the requisite showing for relief would be made by attorneys filing such motions.

Alternative Actions Considered

The committee considered amending rule 376 of the California Rules of Court to require that detailed warning notices be served on the client with the motion papers and certain specific information about pending matters be provided to the court. The committee concluded, however, that requiring the use of forms that include proper notices and all the relevant information would be a simpler, surer method of accomplishing the goal of improving motions to be relieved as counsel.

At the time of the adoption of the forms, rule 376 would be amended to refer to the forms. (The amendment of rule 376 is discussed in the Civil and Small Claims Advisory Committee's report on uniform statewide rules, which is being submitted to the Judicial Council at the same time as this proposal.)

Comments From Interested Parties

A total of 17 comments on the proposed forms were received. Nine of the commentators supported the adoption of the forms without making any specific comments. The remaining commentators supported the forms, but suggested certain changes.

The main concern—expressed by the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association, a judge, an attorney, and a court executive—was that the proposed forms, as circulated for comment, would require attorneys seeking to withdraw to disclose confidential information. The commentators were concerned that, by checking boxes on the forms indicating the particular grounds for the motion to withdraw, attorneys might breach their duties of confidentiality toward their clients. The committee shares these concerns and removed from the notice and declaration forms the items requiring the attorney to specify the grounds for being relieved as counsel.

Also, in response to comments, the committee included on the forms items requesting information about pending *discovery* matters and modified the notices to the client to warn that, after the attorney has been allowed to withdraw, “other parties” as well as the court must be informed of the client's current address.

A chart summarizing the comments and the committee's responses is attached at pages 10–17.

Implementation Requirements And Costs

The forms would simplify the processing of motions to be relieved as counsel by requiring that a set of statewide, uniform forms be used for this purpose. Courts would incur some costs in making the forms available; however, attorneys filing motions to be relieved as counsel would generally obtain the forms from other sources. Furthermore, the use of standard forms should reduce the overall costs of such motions for the courts, attorneys, and others.

Copies of the forms are attached at pages 4–9.

Comments for
Motion to be relieved as counsel
(new forms MC-051, MC-052, and MC-053)

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
1.	Phrasel L. Shelton Rules Committee Chair Superior Court of San Mateo County San Mateo, CA	A	Y	No specific comments.	No response necessary.
2.	Catherine E. Bennett Bakersfield, CA	A		No specific comments.	No response necessary.
3.	Dennis Peter Maio Member Committee on Administration of Justice	A		No specific comments.	No response necessary.
4.	Sharol H. Strickland Court Executive Officer Superior Court of Butte County	A		No specific comments.	No response necessary.
5.	P. McCarron Court Operations Manager Superior Court of California Palm Springs, CA	A		No specific comments.	No response necessary.
6.	Maggie Martinez Court Services Supervisor II Superior Court of Riverside County Riverside, CA	A		No specific comments.	No response necessary.
7.	Alice Lopez Manager-Court Programs Superior Court of Ventura County	A		No specific comments.	No response necessary.

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	Ventura, Ca				
8.	Susan Cichy Management Studies Unit Superior Court of Los Angeles County Los Angeles, CA	A	Y	No specific comments.	No response necessary.
9.	Richard Oliver Attorney San Joaquin County Bar Association	A	Y	Helpful by providing standard forms for use in motions to be relieved as counsel. If attorney uses the form then no memorandum of P and A is required.	No response necessary.
10.	Stacey Mason Court Services Supervisor II Superior Court of Riverside County Riverside, CA	A		Should include in caption an area for the e-mail address. Form is comprehensive.	The committee agreed that the form is comprehensive.
11.	Keri Griffith Court Program Manager Superior Court of Ventura County Ventura, CA	AM		<p>Page 3, 5, 7–Box with Hearing Dated, dept, time, before Hon. is redundant and unnecessary.</p> <p>Page 4–Query if there should be a Declaration under penalty of perjury included/added after all of the Notice to Client boxes.</p> <p>Page 6, paragraph 5–needs more space to describe the subject matter of the hearing (at least one line).</p>	<p>Box contains a summary of useful information about the hearing, date of filing, trial date, etc. These are general notices that do not require a declaration.</p> <p>More space has been provided.</p>
12.	Charlene Walker Division Manager Superior Court of Sacramento County Sacramento, CA	AM	Y	<p>The draft form does not comply with proposed rule 376(a).</p> <p>On rule 376, the following comment was made: “[W]e suggest deletion of the sentence, ‘If no hearing date is presently scheduled, the court shall set one and specify the date in the order.’ The reason for this is</p>	<p>The committee agreed that the forms should be modified to eliminate the specific grounds mentioned.</p> <p>The committee disagreed that the requirement that a hearing must be set should be deleted. This requirement will encourage better case management.</p>

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				that this provision assumes that the department which signs the order is the department which schedules various delay reduction hearings, and such is not the case in Sacramento County.”	
13.	Hon. Arnold H. Gold Superior Court of Los Angeles County Los Angeles, CA	AM	Y	<p>1. I am concerned that the present wording of paragraph 2b of proposed Form MC-052 (“DECLARATION IN SUPPORT . . .”) may lead some attorneys to disclose confidential information that they are prohibited by law from disclosing.</p> <p>2. Paragraph 6b of proposed Form MC-053 (“ORDER GRANTING ATTORNEY’S MOTION. . .”) should be expanded to read “effective upon the filing of proof of service of the signed order upon the client and all other parties who have appeared in this case.” Also, it is at least arguable that paragraph 3a and 3b of that proposed form and paragraph 3a(1) and 3a(2) of Form MC-052 ought to contain references to service upon other appearing parties.</p>	<p>The committee agreed that the forms should be modified to eliminate the specific grounds mentioned in MC-051 and MC-052.</p> <p>It is not necessary for the order to expressly provide that it shall be served on all parties that have appeared because the Code of Civil Procedure already requires such service. (See C.C.P. §§ 285, 1014–1015.)</p>
14.	H. Jay Ford III, Chair Professional Responsibility and Ethics Committee Los Angeles County Bar Association	AM	Y	<p><u>Forms MC–051 and MC–052:</u></p> <p>Objects that paragraph 3 of proposed Form MC–051 and paragraph 2 of proposed Form MC–052 are contrary to rule 376(b), which provides:</p> <p>“The notice shall be accompanied by a declaration stating in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1).”</p>	<p>The committee agreed that the forms should be modified to eliminate the specific grounds mentioned in MC-051 and MC-052.</p>

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				<p>Rule 376(b) appears to recognize the limitations imposed upon an attorney by Business & Professions Code Section 6068(e) and Evidence Code Sections 950-955. Section 6068(e) provides:</p> <p>“It is the duty of an attorney to do all of the following(e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.”</p> <p>Checking one (or more) of the six boxes, or completing the “other” box will likely breach the attorney’s obligation of confidentiality under Business & Professions Code Section 6068(e) and Evidence code Sections 950-955 and is contrary to the requirement of Rule 376(b) that the declaration be “in general terms” and not “compromise the confidentiality of the attorney-client relationship.” Rather, if a form is promulgated by the Judicial Council, it should promote the objectives of Rule 376(b) and highlight the potential adverse consequences of an order noted in Rule 376(d).</p> <p>The six listed categories are too general to be informative to a trial judge if there are substantive reasons for the court to entertain denying the motion (e.g., interference with the court’s calendar, potential breach by the attorney of the attorney’s duty to the client, potential prejudice to the adverse party), but would tend to disclose information to the opposing</p>	

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				<p>party that could damage the client's interest. Particularly damning may be statements that the "client is missing" or that "client noncommunicative."</p> <p>Moreover, experience suggests the "check the box" pleadings often result in superficial responses, often prepared by a secretary or a paralegal. As an alternative, our Committee suggests replacing the list of categories in the notice and in the declaration, and paragraphs 4 of the notice and 3 of the declaration with:</p> <p>"In accordance with Rule 376(b), Business and Professions Code Section 6068(e) and Evidence Code Section 950-955, movant alleges that:...."</p> <p>This would focus the moving party's attention upon the most relevant provisions of the Court Rules and the Code. The moving party is able to make such allegations as he or she believes appropriate after having been directed to the relevant authority.</p> <p>Alternatively, experience suggests that in the majority of cases the motion is unopposed. Where it is unopposed, nothing need be said; where opposition surfaces, the disclosure can be tailored to meet the opposition, subject to the requirements of confidentiality. Toward that view, the Council could consider as an alternative:</p> <p>"The motion is made because differences have arisen</p>	

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				<p>between attorney and client. If requested [by the court, the client or the other party(s)] movant will provide further information consistent with California Rules of Court, Rule 376(b), Business and Professions Code Section 6068(e) and Evidence Code Section 950-955.”</p> <p>A statement of this type will alert the attorney to the need to maintain confidentiality, and eliminate the need for any disclosure except in contested cases where there is a request for such disclosure. While this statement may be too cryptic for many tastes, (a) this is to be an optional form and the attorney can be more specific in the first instance if opposition to the motion is anticipated and (b) it best alerts the bar and the bench to the need for confidentiality.</p>	
15.	Diane L. Karpman Attorney Karpman & Associates 9200 Sunset Blvd. Los Angeles, CA	AM		<p>“In reviewing some random materials, I happened across the proposed form – Motion to be Relieved as Counsel-Civil. This is an interesting idea, and would clarify some very significant issues involving the fiduciary duty of confidentiality, which could benefit from the greater clarify that may be created by this form. Far too many cases of lawyer misconduct, resulting in State Bar investigations and a multitude of civil malpractice actions against lawyers, are caused by flawed motions for withdrawal. Lawyers are uncertain as to what should be disclosed in these motions....</p> <p>“Although there is existing case law justifying may of the criteria for withdrawal contained in the “boxes,”</p>	The committee agreed that the forms should be modified to eliminate the specific grounds mentioned in MC-051 and MC-052.

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				<p>on the proposed motion some of the disclosures could lead to unanticipated and unintended results.</p> <p>“In most cases, although other grounds for withdrawal may exist, the gravamen is usually the client’s failure to compensate the attorney. Depending upon the circumstances, disclosure of this fact could be very harmful for the client’s position and lead to reasonably foreseeable prejudice.</p> <p>“For example, in a simple contractual dispute, where the plaintiff is alleging full performance and there is a breach of the obligation of payment by the defendant. The defendant could be validly asserting receipt of merely substantial performance or defective performance, still owing substantial sums on the contractual obligation. Information that the defendant is not compensating the lawyer could cast negative aspersions upon the potentially legitimate defenses. This could also be true in the context of family law, where a party is delinquent in support of alimony payments. Therefore, in certain circumstances, disclosure of a client’s payment of obligation could harm a client’s position in a specific case.</p> <p>“Additionally, the inability to locate the client, known as the “disappeared client,” could complicate the client’s cause of action. In many situations that information should not and may not be disclosed, due to the resulting foreseeable prejudice to the client’s interests....</p>	

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				<p>“What I am attempting to articulate is that many of these circumstances, although sanctions in some instances, the criteria could result in detrimental exposure depending upon the facts of a particular case. There must be a greater attempt to reconcile a lawyer’s duty pursuant to Rule 3-700, with an efficient method permitting attorney withdrawal in civil litigation....”</p>	
16.	Robert E. Thomas Judge/Chair Rules and Forms Committee Superior Court of Orange County Santa Ana, CA	AM	Y	<p>The proposed form complies with the requirements of C.C.P. 284(2) and CRC 376. The Notice is complete as to types of parties who must seek representation with one exception to an exception. CRC 376(d) provides that a guardian ad litem who is a relative of a child in a paternity action may appear without an attorney. The change would make for a confusing situation for most lay people receiving this Notice, but this is what the statute requires.</p>	<p>The committee concluded that the notices on the form are appropriate.</p>
17.	David Rinaldi Supervising Legal Research Attorney Superior Court of Orange County Santa Ana, CA			<p>While the discussion section states that the form is optional, the form itself indicates it is to be approved for mandatory use.</p>	<p>The invitation to comment asked whether the form should be optional <u>or</u> mandatory. The proposed version that was attached was mandatory. The committee approved making the form mandatory.</p>

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